

## **782 KAR 1:030. Scope and nature of services.**

RELATES TO: KRS 163.470(3), 34 C.F.R. 361.48, 29 U.S.C. 706, 711, 723

STATUTORY AUTHORITY: KRS 163.470(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the Office for the Blind to promulgate administrative regulations to establish and implement policies and procedures for carrying out the program of services for the blind and visually impaired. This administrative regulation establishes the scope, nature, conditions, criteria, and procedures of provided services.

Section 1. Communication. The office shall provide information to applicants and consumers using the most effective mode of communication for the consumer or applicant, including:

- (1) Braille;
- (2) Large print;
- (3) Electronic format;
- (4) Augmentation communication devices, or the spoken language.

Section 2. Vocational Goal. A service shall be provided in accordance with an individualized plan for employment that:

- (1) Emphasizes the determination and achievement of a positive employment outcome; and
- (2) Is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Section 3. Vocational Training at Institutions of Postsecondary Education. (1) A service provided at an institution of higher education shall comply with the provisions governing comparable benefits established in Section 16 of this administrative regulation.

(2)(a) Except as provided in paragraph (b) of this subsection, the amount paid by the office for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education.

(b) If the consumer's vocational goal requires a degree program not offered by an in-state public institution, the amount paid by the office for tuition shall be the amount charged for that degree program after comparable benefits are applied.

(3) The office shall use the school budget, awards, and need analysis for costs of tuition and fees, books, supplies, room, board, personal expenses, and transportation prepared by the student financial aid office of the institution and shall negotiate with the consumer the allocation of those costs.

(4) The office may pay a fee associated with attendance at an educational institution if the fee is required of an individual who attends the institution.

(5)(a) The consumer shall:

1. Maintain full-time status as defined by the institution;
2. Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or
3. Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year.

(b) All coursework shall facilitate the achievement of positive employment outcomes.

(6) By the end of the second term or semester and throughout each subsequent term or semester, a consumer shall achieve the higher of:

- (a) An overall "C" grade average; or
- (b) Standing required for admission, licensure, or certification.

- (7) An exception to a requirement established in subsection (5) or (6) of this section shall:
  - (a) Be granted if the consumer:
    - 1. Has a need or circumstance that renders him unable to meet the requirement; and
    - 2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.
  - (b) Not be granted for the requirements established in subsection (6) of this section for a period beyond one (1) semester.
- (8) The consumer shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.
- (9) If a consumer does not maintain the standards of this section, the counselor shall:
  - (a) Terminate services at the institution of higher education; and
  - (b) Simultaneously notify the consumer of the appeal procedure established in 782 KAR 1:040.
- (10) A service terminated under subsection (9) of this section shall be reinstituted if the consumer:
  - (a) Successfully appeals the counselor's decision, in accordance with 782 KAR 1:040; or
  - (b) Subsequently meets the standard under which the service was terminated.

Section 4. On-the-job-training. On-the-job-training provided in private or public employment shall be subject to the conditions established in this section:

- (1) The consumer shall receive at least minimum wage and be paid commensurate with the prevailing wages for the job.
- (2) The employer shall provide to the consumer the same benefits and privileges that accrue to other employees.
- (3) Prior to training, a written agreement shall be:
  - (a) Completed by the counselor, describing the goals and objectives of the training consistent with the needs of the employer, including:
    - 1. The length of training;
    - 2. The skills taught;
    - 3. Wages earned;
    - 4. Responsibility of the office; and
    - 5. An understanding that the consumer shall be hired permanently after successful completion of the training program; and
  - (b) Signed by the:
    - 1. Office; and
    - 2. Employer.
- (4) The consumer shall strive to make satisfactory progress in the training. The employer shall provide training reports in accordance with the agreement to the office documenting the satisfactory or unsatisfactory progress of the consumer.
- (5) The agreement for on-the-job training shall be terminated by the counselor, the employer, or the consumer if the conditions of this section are not met.

Section 5. Work Experience. A program of work experience in private or public employment shall be provided according to the conditions established in this section:

- (1) The individual shall not be sponsored for a period exceeding 520 total hours of work experience. If used as a trial work experience, up to three (3) different experiences may be allowed, but shall be completed within a year not to exceed a total of 520 work hours.
- (2) The consumer shall at least receive minimum wage.
- (3) A written agreement shall be completed by the counselor and employer to designate:

- (a) The length of the work experience;
  - (b) Skills taught;
  - (c) The number of hours to be worked each week; and
  - (d) The payment that the individual shall receive.
- (4) The employer shall monitor the performance of the individual in work experience and make periodic reports to the counselor.
- (5) The agreement may be terminated by either party if the terms of the agreement are not being accomplished.

Section 6. Physical and Mental Restoration. (1) An applicant or consumer shall choose a qualified specialist who:

- (a) Is licensed in the particular field of practice to provide the approved physical or mental restoration service; and
  - (b) Agrees to accept the office's allowable rate of payment.
- (2) The medical diagnosis and prognosis shall indicate and recommend necessary restoration services. The office may obtain a second opinion before agreeing to pay for any restoration services.

Section 7. Out of State Services. A rehabilitation service may be provided outside the Commonwealth of Kentucky, if:

- (1) The service meets the consumer's rehabilitation need;
- (2) The service is more convenient for the consumer;
- (3) The service is cost saving;
- (4) The service is not provided in state; and
- (5) The provision of an in-state service would delay service to a consumer at extreme medical risk.

Section 8. Maintenance. (1) Maintenance shall be provided only if necessary to support and derive the full benefit of other rehabilitation services being provided. Maintenance shall not supplant a consumer's responsibility to maintain his own residence and daily subsistence.

(2) Maintenance shall cease after the consumer has achieved an employment outcome and received the first paycheck.

(3) The office shall not pay more for a consumer's room and board at an institution of higher education than the highest rate for double occupancy at an in-state public institution.

(4) The cost of lodging and meals provided in support of services other than at an institution of higher education shall not exceed the per diem rate established for a state employee in Section 7 of 200 KAR 2:006.

Section 9. Transportation. Transportation for a consumer shall be paid in accordance with the requirements established in this section:

(1) Transportation by a public common carrier shall be in the most economical means available and in accordance with the rehabilitation needs of the consumer.

(2) Private transportation by private vehicle shall not exceed the mileage rate established for a state employee in Section 7 of 200 KAR 2:006.

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for a state employee in Section 7 of 200 KAR 2:006.

(4) The total cost of transportation allowed for commuting between home and campus for a consumer who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for a consumer who resides on campus at an institution of higher education shall be limited annually to two (2) round trips between the consumer's home and the campus and total expense shall not exceed the school budget analysis for transportation.

(6) Transportation shall include relocation and moving expenses if necessary for a consumer to achieve placement in employment.

Section 10. Interpreter Services. Interpreter services shall be provided by qualified personnel:

(1) If sign language or an interpreter of tactile interpreting is a necessary means of communication for the consumer; and

(2) In conjunction with application and effective participation in other services.

Section 11. Reader Services. Reader services shall be provided for a consumer:

(1) If printed material in alternative format is not readily available through the volunteer recording services of the office; and

(2) In conjunction with application for services and to participate effectively in other rehabilitation services.

Section 12. Rehabilitation Technology. (1) The office shall obtain low vision devices for a consumer from a provider who is licensed or certified to prescribe and fit the device.

(2) Assistive technology and adaptive devices recommended by an Assistive Technology Specialist shall be provided if necessary to improve the functional capabilities of the consumer in obtaining a positive employment outcome.

(3) Unusual or expensive assistive technology shall only be provided to an individual if use of a traditional aid or device is not feasible.

(4) A consumer shall return assistive technology to the office if it is no longer used for the purpose for which it was provided.

(5) Assistive technology shall be:

(a) Provided in a new or like new condition; and

(b) Repaired or replaced by the office if, during the course of the individualized plan for employment, it becomes:

1. Defective;

2. Worn out; or

3. Obsolete.

(6) The repair, maintenance, or replacement of the assistive technology shall be the responsibility of the consumer following closure or successful attainment of a positive employment outcome unless:

(a) Necessary to maintain, regain, or advance in employment; or

(b) The Individualized Plan for Employment (IPE) includes extended services following closure.

Section 13. Self-employment. (1) The office shall approve a self-employment for a consumer if:

(a) The consumer participates in a feasibility evaluation and development of a business plan;

(b) The vocational goal is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choices;

(c) The consumer attempts to secure additional resources to support the outcome; and

(d) The consumer:

1. Obtains the required:
    - a. License;
    - b. Permit;
    - c. Certificate; or
    - d. Lease; and
  2. Operates in conformity with federal, state, and local statutes and regulations.
- (2) The office's financial participation may be negotiated and shall be limited by the allocation and expenditure of vocational rehabilitation funds.

Section 14. Tools and Equipment. The consumer shall return tools, equipment, and supplies provided for employment if use by the consumer for that purpose ceases.

Section 15. Printed Materials. A textbook or other vocational material shall be made available in alternative format through the office's Accessible textbook services or other service providers.

Section 16. Comparable Benefits. (1) When the individualized plan for employment is developed, the consumer and vocational rehabilitation counselor may negotiate applications for comparable services.

(2) Grant assistance, including a gift, endowment, or scholarship not based upon merit, provided for a consumer enrolled in an institution of postsecondary education, shall be considered a comparable benefit.

(3) The following forms of financial assistance shall not be considered a comparable benefit for a consumer individual enrolled at an institution of postsecondary education:

- (a) A guaranteed student loan;
- (b) A national direct or student loan;
- (c) A work-study payment;
- (d) Other aid termed as self-help; or
- (e) An unrestricted monetary award from a civic, professional, or social organization.

(4) Comparable benefits awarded for purposes of higher education shall be applied to the services designated by the granting authority.

(5) For any consumer who receives Social Security income benefits, one-third of the monthly award shall be applied toward room and board for each month attending school.

Section 17. Participation of a Consumer in the Costs of Services. (1) Subject to subsection (2) of this section, the financial need of an individual with a disability may be considered by the office in the provision of services.

(2) Services Exempt from financial need shall include the following:

- (a) Assessment for determining eligibility and priority for services;
- (b) Assessment for determining vocational rehabilitation needs;
- (c) Vocational rehabilitation counseling and guidance;
- (d) Referral for other services;
- (e) Job-related services;
- (f) Personal assistance services; and

(g) Any auxiliary aid or service (e.g. interpreter services, reader services) for an individual with a disability required under 29 U.S.C. 723 of the Rehabilitation Act or the Americans with Disabilities Act, 42 U.S.C. 12101 to 12213.

Section 18. Emergency Denial of Services. The office shall immediately suspend or termi-

nate services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

Section 19. A waiver to any limit established for the scope and nature of services shall be made at the discretion of the director of consumer services with sufficient documentation supporting the rehabilitation needs of the consumer.

(1) A request for a waiver shall be submitted to the director by either the counselor or the consumer.

(2) A written decision based upon the rehabilitation needs of the consumer shall be provided to the counselor and consumer within ten (10) working days of submission of the request.

Section 20. Order of Selection. If the executive director and State Rehabilitation Council determine that the agency lacks available funds to serve all consumers, the office shall follow an order of selection to give priority for services according to a ranking of categories of consumers based on the severity of disability as follows:

(1) Priority Category One (1) which shall include an individual with a most significant disability whose:

(a) Severe impairment limits three (3) or more functional capacities in terms of employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(2) Priority Category Two (2) which shall include an individual with a significant disability whose:

(a) Severe Impairment limits two (2) functional capacities in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(3) Priority Category Three (3) which shall include a consumer with a significant disability whose:

(a) Impairment seriously limits one (1) functional capacity in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services over a period of time.

(4) Priority Category Four (4) which shall include all other consumers, including consumers with a nonsignificant disability.

(5) The order of selection shall be implemented on a statewide basis.

(6) The office shall conduct an assessment to determine an individual's:

(a) Eligibility for vocational rehabilitation services; and

(b) Priority under the order of selection.

(7) The order of selection shall not apply to the following:

(a) The acceptance of a:

1. Referral; or

2. Applicant;

(b) The provision of assessment services to determine an individual's:

1. Eligibility for vocational rehabilitation services; or

2. Priority under the order of selection; or

(c) A consumer who is in the process of receiving services at the effective date of the order of selection.

(8) A consumer shall be immediately reclassified into a higher priority category if his level of impairment increases and is documented.

(9) In the order of selection, a consumer in a closed priority category shall be placed on a waiting list until the priority category is reopened.

(10) If vocational rehabilitation services cannot be provided to all consumers in a given category, a waiting list based upon the date of eligibility for vocational rehabilitation services shall be used within a category.

(11) If sufficient funds become available, the executive director and the State Rehabilitation Council shall adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow. (Recodified from 720 KAR 1:030, 7-5-90; Am. 21 Ky.R. 565; eff. 10-6-94; 23 Ky.R. 3428; 24 Ky.R. 83; eff. 7-2-97; 25 Ky.R. 133; 847; eff. 10-1-98; 33 Ky.R. 2165; 3174; eff. 5-4-2007; 38 Ky.R. 830; 1130; eff. 12-12-11.)